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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,452	11/28/2001	Praveen K. Saxena	270.60USWO	2097
23552	7590	11/30/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			PARA, ANNETTE H	
			ART UNIT	PAPER NUMBER

1661

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/937,452

**Applicant(s)**

SAXENA ET AL.

**Examiner**

Annette H. Para

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,7-18,40 and 42-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,7-18,40 and 42-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

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## **DETAILED ACTION**

### **Status of the application**

As requested in the amendment from applicants dated February 9, 2004, which was in reply to the Office action dated November 5, 2003, claims 2, 7, 11, 12, 43, 46, 48 were previously presented, claims 10, 13-18, are original, claims 1, 3, 8, 9, 40, 42, 44, 45, 47, 49 have been amended, and claims 4-6, 19-39, 41 are cancelled.

### **Claim Rejection - 35 U.S.C. 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 7-18 and 40, 42, 43, 44- 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, it is unclear if the basal medium from step b is the same than the basal medium from step c. This item is not clearly defined in the specification or claims.

In claim 3, there is no antecedent basis for said seedlings.

In claim 11, it is unclear how an explant could be selected from the seed. Also there is no antecedent basis for the seed, (the) petiole,(the) hypocotyls, (the)stem, (the) cotyledon and (the) leaf.

Claims 40 and 42 depend on claim 4, which is a canceled claim.

Claim 45 depends on claim 44, which claims a basal medium lacking a plant growth regulator whereas in claim 45 the medium claims contain one or more plant growth regulator.

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**Claim Rejections - 35 USC § 102/103**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C.103(c) and potential 35 U.S.C.102 (e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 47 remain rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Cellarova et al.as previously stated (paper 9, page 3).

Applicants' arguments filed on September 7, 2004 have been fully considered but they are not persuasive. Applicants argue that Cellarova et al. are not teaching adding any additives to the basal medium from about 50 to about 200 mg/L. Callarova et al. disclose a plant grown in medium comprising additive such as Ca and Zn. This plant grown in medium comprising these additive will contain a more elevated level of these nutrients than if grown on a basal medium lacking these elements. As a plant grown in soil contain more microelement than a plant grown in distilled water, for example. The method

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or process used to obtain the product does not matter if Cellorova plant is identical to the plant of claim 47. Cellorova teach a plant grown in a medium comprising additive such as Ca and Zn. Applicant argues that the step of adding the additive of interest give a plant which contains more additive than a plant grown in a basal medium. Basal culture media may contain different concentration of additive. For example a plant grown in Murashige and Skoog medium will contain more Ca than a plant grown in a Gamborg et al. medium, yet, Murashige and Skoog medium as well as Gamborg et al. medium are both basal medium. Note that in the absence of any definition for "basal", water could be considered a basal medium. The specification give examples of media which may be used for this method and mention that that these examples are non-limiting, the specification does not exclude water as being a basal medium.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

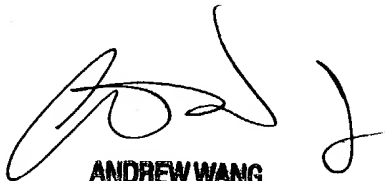
#### **Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette H. Para whose telephone number is (571) 272-0982. The Examiner can normally be reached Monday through Thursday from 5:30 am to 4:00 pm.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax numbers for the group is (703) 872-9306. The Technology Center phone number is (571) 272-1600. Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 872-9305.

A.H.P



**ANDREW WANG**  
**SUPERVISORY PATENT EXAMINER**  
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